



Policy:

NPCS 010 Mental Health Act Code of Practice Equality and Human Rights

Executive or Associate Director lead	Executive Director of Nursing, Professions and Care Standards
Policy author/ lead	Head of Equality and Inclusion
Feedback on implementation to	Mental Health Act Committee

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Keywords	Equality; Human Rights; Mental Health Act
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Policy Version and advice on document history, availability and storage

Version 2. Development of Original Policy ratified in 3rd November 2016 for reasons of good practice

This policy will be available to all staff via the Sheffield Health & Social Care NHS Foundation Trust Intranet and on the Trust's website. The previous version will be removed from the Intranet and Trust website and archived. Any copies of the previous policy held separately should be destroyed and replaced with this version.

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1. Introduction

Equality, Inclusion, and Human Rights are at the heart of the Trusts Values of Respect; Compassion; Partnership; Accountability; Fairness and Ambition. Services and practices will always be undertaken in line with these Values which have been agreed in partnership with staff, people who use Trust services, Carers and families. The Trust is committed to taking forward the Equality Act 2010 Public Sector Equality Duty by ensuring that when undertaking services relevant to the Mental Health Act 1983, regard will be paid to:

- Eliminating discrimination, harassment, victimisation and any other conduct prohibited by the Equality Act 2010,
- Advancing equality of opportunity between people who protected characteristics¹ and people who do not share protected characteristics, and
- Fostering good relations between people who share protected characteristic and people who do not share these.

The Trust is also mindful that the provisions of mental health legislation impact on a person's Human Rights and if not applied lawfully may breach these rights. The principles that underpin Human Rights i.e. Fairness, Respect, Equality Dignity and Autonomy are essential principles that underpin the services we provide, irrespective of association with using the Mental Health Act.

This policy specifically focuses on these areas with reference to Chapter 3 of the Mental Health Act 1983 Code of Practice and specifically item 3.15 which expects that the Trust will have a Human Rights and Equality policy for service provision and practice under the Mental Health Act 1983.

2. Scope

This policy is Trust wide in terms of any services and functions relevant to the Mental Health Act 1983.

3. Definitions

3.1. The Act – The Mental health Act 1983.

3.2. The Code of Practice – The Mental Health Act 1983 Code of Practice.

3.3. Hospital Managers - does not mean the management team of the hospital but the people or body whose hospital it is i.e. the NHS Foundation Trust as a body.

4. Purpose

The purpose of this policy is to clearly set out how the Trust intends to meet its legal duties under the Equality Act 2010 and the Human Rights Act 1998 with reference to the Mental Health Act 1983 and Associated Code of Practice Chapter 3.

¹ The Protected Characteristics are: Age, Disability, Gender Reassignment, Marriage and Civil Partnership, Pregnancy and Maternity, Race, Religion or Belief, Sex and Sexual Orientation

5. Duties

- 5.1. Hospital Managers are responsible for ensuring that services and practices relevant to the Mental Health Act 1983 are undertaken in line with The Act and Code of Practice. They must have a good knowledge of this policy and its relevance to the responsibilities of Hospital Managers. Hospital Managers are responsible for governance associated with this policy. This will be delegated through the Trust Mental Health Act Committee.
- 5.2. The Deputy Chief Executive has delegated responsibility for ensuring that clinical practice is carried out in accordance with The Act and Code of Practice.
- 5.3. Directors are responsible for ensuring that practices within their service areas are carried out in accordance with The Act and Code of Practice.
- 5.4. Directorate Clinical and Service leads must be familiar with this policy and ensure that governance related to the policy is implemented in their area of responsibility.
- 5.5. Service Managers must have good knowledge of the policy and ensure that the policy is applied in practice in their areas of responsibility.
- 5.6. Ward/Team Managers are responsible for ensuring that staff are aware of the policy and that it is applied in their areas of practice. They are also responsible for monitoring such practices.
- 5.7. The Mental Health Act Administration Manager is responsible for monitoring compliance with The Act and the Code of Practice.

6. Process

6.1. Equality

- 6.1.1. The Trust will take account of all relevant sections of the Equality Act 2010 and related secondary legislation when carrying out functions associated with The Act.
- 6.1.2. This includes, but is not limited to the duties of the Trust under section 149 of the Equality Act 2010 and provisions in the Act relevant to Disability. The Trust will, in particular, aim to eliminate unlawful discrimination and advance equality by:
- 6.1.3. Ensuring that systems are in place to review procedures and practices associated with The Act to ensure they do not directly or indirectly discriminate within the terms of the Equality Act 2010.
- 6.1.4. Making changes to procedures or practices to prevent unlawful discrimination where concerns are identified.

- 6.1.5. Ensuring that systems that are in place to provide feedback on services are accessible, take account of the diversity of people using Trust services and are monitored to ensure that feedback is being considered that is representative of all persons who may require and use Trust services.
- 6.1.6. Recognising and responding to the diversity of people using our services and their communities, families and friends in assessment and care planning.
- 6.1.7. Collecting information relevant to the ethnicity, gender, disability, age and sexual orientation of people using Trust services to monitor the impact of procedures and practices on groups protected under the Equality Act 2010.
- 6.1.8. Publishing an annual report through the Trust internet site of how information and data specific to service users affected by The Act has been used to monitor and provide high quality services, including data collected and reviewed on collaborative care plans.
- 6.1.9. Having available and referring to the Yorkshire and Humber Protocol '*Providing Hospital Services to Trans Patients*'.
- 6.1.10. Complying with requirements and standards for single sex accommodation.
- 6.1.11. Specifically recording and reviewing incidents associated with Race using the Trust '*Safeguard*' incident reporting system.
- 6.1.12. Having in place a '*Policy on Zero Tolerance of Harassment (Third Party)*', aimed at addressing harassment which may take place that is not staff to staff.
- 6.1.13. Ensuring that information and advice is accessible in respect to language and culture and where a person has a need for accessible information associated with a disability this is recorded and provided.
- 6.1.14. Ensuring that the need for an interpreter is recorded and interpreters are provided to ensure that people have equal access to services, are empowered when they are using services and engaged and involved in decision making.
- 6.1.15. Making adjustments to the way that practices and procedures associated with The Act are applied to address barriers that may be experienced by a Disabled person, whether this is associated with a mental or physical impairment. This may include making changes to the environment in which services are delivered, the way in which practices are implemented or making arrangements for access to specialist equipment.

6.2. Human Rights

- 6.2.1. The Trust will aim to empower people who use our services by recognising people's ability to recover and by working alongside individuals to support them in that journey, recognising potential and working with optimism and hope.
- 6.2.2. The Trust recognises the legally enforceable rights of people using its services under the Human Rights Act 1998 and will take account of the Act and Code of Practice when carrying out functions associated with this policy. In particular this includes, but is not limited to:
 - 6.2.2.1. Ensuring that procedures and practices relevant to The Act are undertaken strictly in line with Human Rights law, guidance, good practice and principles.
 - 6.2.2.2. Ensuring that the Trust Values: Respect, Compassion, Partnership, Accountability, Fairness and Ambition, are the guiding principles in implementation of Trust policies associated with The Act.
 - 6.2.2.3. Embedding consideration of Human Rights law, guidance, good practice and principles in governance procedures and practices associated with The Act.
 - 6.2.2.4. Providing information about rights to people who use our services and their families and communities.
 - 6.2.2.5. Ensuring access to information about Advocacy and other third party support and advice and recording and sharing information where a person requires or uses Advocacy services.
 - 6.2.2.6. Providing information that is accessible (in terms of content and availability) relevant to policies associated with The Act and associated practice and procedures.
 - 6.2.2.7. Establishing, maintaining and monitoring systems and processes to support good decision making where competing Human Rights need to be considered, and ensuring that decisions which may restrict a person's rights are necessary, proportionate and clearly recorded.
 - 6.2.2.8. Maintaining a program of reduction of restrictive interventions and ensuring that data relating to restrictive interventions is collected routinely and reviewed. Ensuring that any blanket restriction that is considered necessary and proportionate and has been approved by the *Restrictive Intervention Group* on behalf of the Board.

6.3. Health Inequalities

The Trust recognises that many people who use its services may experience health inequalities and will aim to work in partnership with commissioners, people who use our services and other stakeholders to consider and address these.

6.4. Communication and Embedding Good Practice

- 6.4.1. The Trust Statement on Equality and Human Rights and the Mental Health Act Code of Practice will be publicised and available (Appendix G).
- 6.4.2. The Trust will maintain up to date knowledge of relevant legislation and associated guidance and case law and make amendments to policy and practice in response to these.
- 6.4.3. The Trust will provide training to staff to support them to consider Equality and Human Rights when they are undertaking activities and actions associated with The Act. This will include integrating Equality and Human Rights into Mental Health Act training as well as specific training.
- 6.4.4. The Trust will ensure that feedback on services is considered in a person and community centred context.
- 6.4.5. The Trust will publish information in its Annual Equality and Human Rights Report that is relevant to this policy.
- 6.4.6. An overview of how key areas in respect to 6.1 and 6.2 above will be overseen and assured is set out in Appendix H

7. Dissemination, storage and archiving (Control)

The policy is available on the Trust's intranet and available to all staff. It will be disseminated through a communication to all staff

8. Training and other resource implications

Training will be required associated with this policy As noted at 6.7.3 above this will include integrating Equality and Human Rights into Mental Health Act training as well as specific training. A task and finish group will be established reporting to the Trust Mental Health Act Committee, this group will consider how training needs will be met alongside other training needs associated with The Act.

9. Audit, monitoring and review

Monitoring Compliance Template						
Minimum Requirement	Process for Monitoring	Responsible Individual/group/committee	Frequency of Monitoring	Review of Results process (e.g. who does this?)	Responsible Individual/group/committee for action plan development	Responsible Individual/group/committee for action plan monitoring and implementation
All performance related elements of the policy are monitored and achieved	Reports to the Mental Health Act Committee	Head of Mental Health Legislation	Six monthly	Mental Health Act Committee	Head of Mental Health Legislation	Mental Health Act Committee

10. Implementation plan

Action / Task	Responsible Person	Deadline	Progress update
New policy to be uploaded onto the Intranet and Trust website.	Director of Corporate Governance	Within 5 working days of ratification	
A communication will be issued to all staff via the Communication Digest immediately following publication.	Director of Corporate Governance	Within 5 working days of ratification	
A communication will be sent to Education, Training and Development to review training provision.	Director of Corporate Governance	Within 5 working days of ratification	

11. Links to other policies, standards and legislation (associated documents)

- [Mental Health Act 1983](#)
- [Human Rights Act 1998](#)
- [Equality Act 2010](#)
- [Mental Health Act Code of Practice 2015](#)
- All Trust policies associated with the Mental Health Act 1983 – see policy section
- All procedures associated with the Mental Health Act 1983
- [Care Quality Commission Human rights approach for our regulation of health and social care services](#)
- The Accessible Information Standard

12. Contact details

Title	Name	Phone	Email
Head of Mental Health Legislation	Anne Cook	Ext 64913	Anne.cook@shsc.nhs.uk
Head of Equality and Inclusion	Liz Johnson	Ext 16703	Liz.Johnson@shsc.nhs.uk

13. References

- [Mental Health Act 1983](#)
- [Human Rights Act 1998](#)
- [Equality Act 2010](#)
- [Mental Health Act Code of Practice 2015](#)

Appendix A – Version Control and Amendment Log

Version No.	Type of Change	Date	Description of change(s)
V1.1	Policy amended	December 2017	<ol style="list-style-type: none"> 1. Front page - feedback on implementation amended to <i>Mental Health Act Committee</i> 2. Amendments to the introduction - incorrect reference to section three rather than chapter three of the code amended. 3. New -Appendix inserted <i>Appendix H – Policy Governance Chart</i> And reference in the policy to its purpose i.e. 6..4.6 . <i>An overview of how key areas in respect to 6.1 and 6.2 above will be overseen and assured is set out in Appendix H</i> 4. inclusion of ‘Rights’ and an amendment to the introduction to make clearer reference to Human Rights
V.1	Policy ratified	may 2016	Ratified by EDG
V.2	New draft policy created	October 2016	New policy commissioned by the Mental health Act Policy group/ Requirement under the mental health act code of practice s.3.15

Appendix B – Dissemination Record

Version	Date on website (intranet and internet)	Date of “all SHSC staff” email	Any other promotion/ dissemination (include dates)
V.2	June 2018	June 2018	

Appendix C – Stage One Equality Impact Assessment Form

Equality Impact Assessment Process for Policies Developed Under the Policy on Policies

Stage 1 – Complete draft policy

Stage 2 – Relevance - Is the policy potentially relevant to equality i.e. will this policy potentially impact on staff, patients or the public? If **NO** – No further action required – please sign and date the following statement. If **YES** – proceed to stage 3

This policy does not impact on staff, patients or the public (insert name and date)

Stage 3 – Policy Screening - Public authorities are legally required to have ‘due regard’ to eliminating discrimination , advancing equal opportunity and fostering good relations , in relation to people who share certain ‘protected characteristics’ and those that do not. The following table should be used to consider this and inform changes to the policy (indicate yes/no/ don’t know and note reasons). Please see the SHSC Guidance on equality impact assessment for examples and detailed advice. This is available by logging-on to the Intranet first and then following this link https://www.xct.nhs.uk/widget.php?wdg=wdg_general_info&page=464

	Does any aspect of this policy actually or potentially discriminate against this group?	Can equality of opportunity for this group be improved through this policy or changes to this policy?	Can this policy be amended so that it works to enhance relations between people in this group and people not in this group?
AGE	No	This policy is specifically intended to promote equality of opportunity for this group	No
DISABILITY	No	This policy is specifically intended to promote equality of opportunity for this group	No
GENDER REASSIGNMENT	No	This policy is specifically intended to promote equality of opportunity for this group	No
PREGNANCY AND MATERNITY	No	This policy is specifically intended to promote equality of opportunity for this group	No
RACE	No	This policy is specifically intended to promote equality of opportunity for this group	No
RELIGION OR BELIEF	No	This policy is specifically intended to promote equality of opportunity for this group	No
SEX	No	This policy is specifically intended to promote equality of opportunity for this group	No
SEXUAL ORIENTATION	No	This policy is specifically intended to promote equality of opportunity for this group	No

Stage 4 – Policy Revision - Make amendments to the policy or identify any remedial action required (action should be noted in the policy implementation plan section)

Please delete as appropriate: no changes made.

Impact Assessment Completed by (insert name and date)

Liz Johnson Head of Equality and Inclusion October 2016

Appendix D - Human Rights Act Assessment Form and Flowchart

You need to be confident that no aspect of this policy breaches a person's Human Rights. You can assume that if a policy is directly based on a law or national policy it will not therefore breach Human Rights.

If the policy or any procedures in the policy, are based on a local decision which impact on individuals, then you will need to make sure their human rights are not breached. To do this, you will need to refer to the more detailed guidance that is available on the SHSC web site

<http://www.justice.gov.uk/downloads/human-rights/act-studyguide.pdf>

(relevant sections numbers are referenced in grey boxes on diagram) and work through the flow chart on the next page.

1. Is your policy based on and in line with the current law (including case law) or policy?

Yes. No further action needed.

No. Work through the flow diagram over the page and then answer questions 2 and 3 below.

2. On completion of flow diagram – is further action needed?

No, no further action needed.

Yes, go to question 3

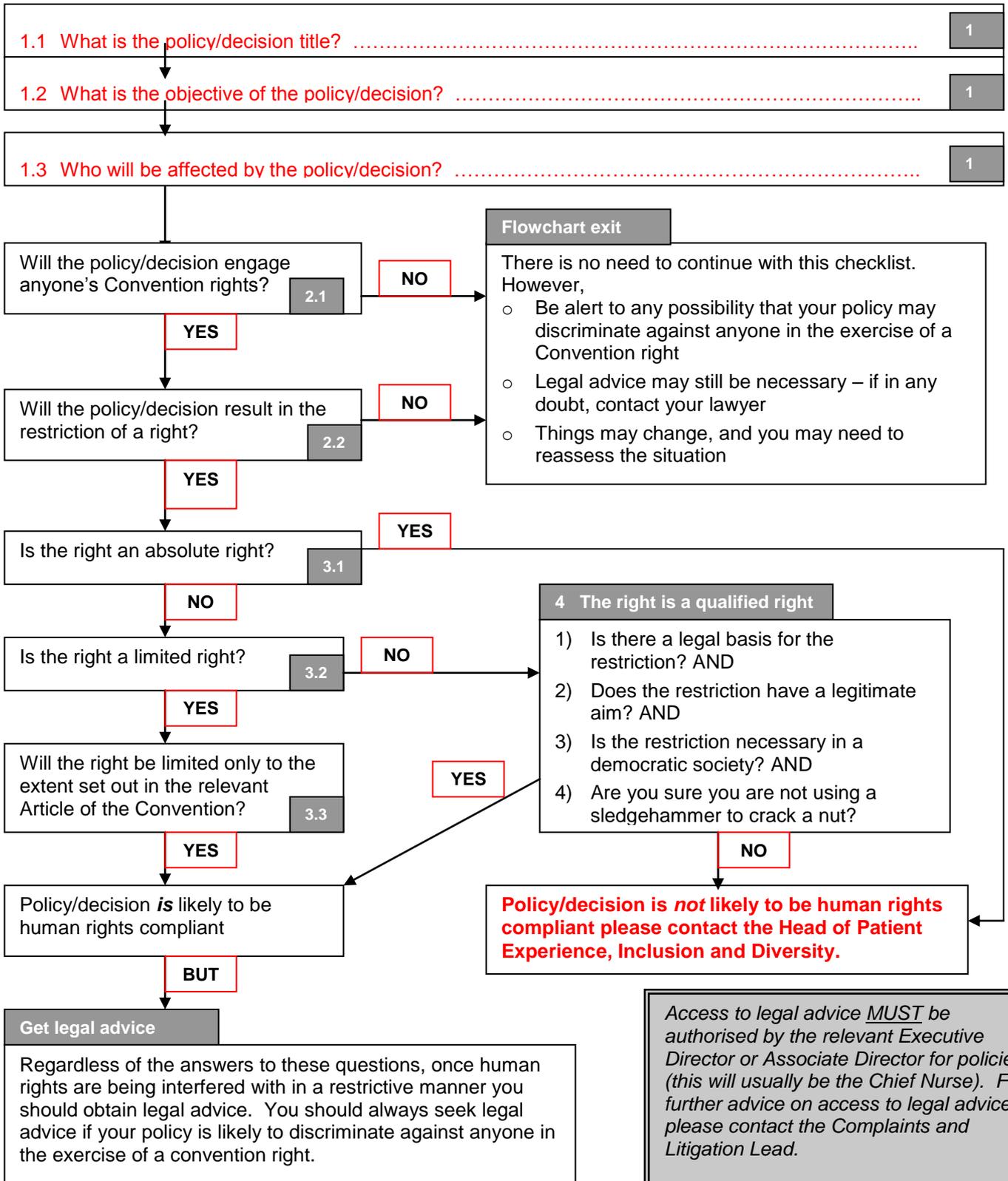
3. Complete the table below to provide details of the actions required

Action required	By what date	Responsible Person

Human Rights Assessment Flow Chart

Complete text answers in boxes 1.1 – 1.3 and highlight your path through the flowchart by filling the YES/NO boxes red (do this by clicking on the YES/NO text boxes and then from the Format menu on the toolbar, choose 'Format Text Box' and choose red from the Fill colour option).

Once the flowchart is completed, return to the previous page to complete the Human Rights Act Assessment Form.



Appendix E – Development, Consultation and Verification

- The policy was drafted by the Trust Head of Equality and Inclusion and was based on Section 3 of the Mental Health Act Code of Practice 2015. The Code makes suggestions for minimum requirements of the policy.
- The draft content was discussed by the trust Mental Health Act Policy Group and specifically reviewed by the Trust Lead Consultant for Mental Health Act 1983.
- The Mental Health Act Policy Group proposed that a task and finish group would be set up to define how the policy would be implemented in the Trust (The Mental Health Act, Equalities and Human Rights Act Group) , this would be chaired by a new post – Mental Health Legislation Manager (now Head of Mental Health Legislation).
- This group met and agreed the policy governance process now described in Appendix H.
- Subsequently some additions were made to improve the ‘policy statement’ i.e. inclusion of Rights and an amendment to the introduction to make clearer reference to Human Rights these were discussed and agreed with the Head of Mental Health Legislation and agreed with the Mental Health At Committee in December 2017.

Appendix F –Policies Checklist

Please use this as a checklist for policy completion. The style and format of policies should follow the Policy Document Template which can be downloaded on the intranet.

1. Cover sheet

All policies must have a cover sheet which includes:

- The Trust name and logo ✓
- The title of the policy (in large font size as detailed in the template) ✓
- Executive or Associate Director lead for the policy ✓
- The policy author and lead ✓
- The implementation lead (to receive feedback on the implementation) ✓
- Date of initial draft policy ✓
- Date of consultation ✓
- Date of verification ✓
- Date of ratification ✓
- Date of issue ✓
- Ratifying body ✓
- Date for review ✓
- Target audience ✓
- Document type ✓
- Document status ✓
- Keywords ✓
- Policy version and advice on availability and storage ✓

✓

2. Contents page

✓

3. Flowchart

N/A

4. Introduction

✓

5. Scope

✓

6. Definitions

✓

7. Purpose

✓

8. Duties

✓

9. Process

✓

10. Dissemination, storage and archiving (control)

✓

11. Training and other resource implications

✓

12. Audit, monitoring and review

✓

This section should describe how the implementation and impact of the policy will be monitored and audited and when it will be reviewed. It should include timescales and frequency of audits. It must include the monitoring template as shown in the policy template (example below).

Monitoring Compliance Template						
Minimum Requirement	Process for Monitoring	Responsible Individual/group/committee	Frequency of Monitoring	Review of Results process (e.g. who does this?)	Responsible Individual/group/committee for action plan development	Responsible Individual/group/committee for action plan monitoring and implementation
A) Describe which aspect this is monitoring?	e.g. Review, audit	e.g. Education & Training Steering Group	e.g. Annual	e.g. Quality Assurance Committee	e.g. Education & Training Steering Group	e.g. Quality Assurance Committee

13. Implementation plan



14. Links to other policies (associated documents)



15. Contact details



16. References



17. Version control and amendment log (Appendix A)



18. Dissemination Record (Appendix B)



19. Equality Impact Assessment Form (Appendix C)



20. Human Rights Act Assessment Checklist (Appendix D)



21. Policy development and consultation process (Appendix E)



22. Policy Checklist (Appendix F)



Appendix G –Trust Policy Statement

Mental Health Act Code of Practice *Trust Statement on Equality and Human Rights*

People who use our services have the following Rights

- To be treated with respect, dignity and compassion²
- Not be discriminated against on the grounds of protected characteristics: age, disability, gender reassignment, marriage or civil partnership, pregnancy and maternity, race, religion or belief, sex, sexual orientation.³
- To have access to and information about independent advocacy services⁴
- Liberty, unless detained lawfully⁵
- Adequate healthcare for their physical and mental health needs⁶
- Access to health promotion and prevention information⁷
- Protection from inhuman or degrading conditions⁸
- Agree how much they want family and friends involved in their care and support⁹
- Support to make an advance statement about their care and treatment choices if they become ill¹⁰

Ensuring these Rights

Equality and Human Rights Legislation

- Sheffield Health and Social Care publish a report every year that says what we have done to prevent discrimination, advance equal opportunity and foster good relations. The report also covers Human Rights. The report is published on our web site and written copies in different formats can be provided by contacting SHSC

Monitoring Equality and Human Rights

- Alongside our annual report we publish information about the diversity of people who use our services.
- When we develop and update services we use equality impact analysis to see if the change might disadvantage any groups - this is also an opportunity to improve quality.
- We monitor incidents that appear to involve racial harassment or that potentially impact on a person's Human Rights.
- We monitor areas such as seclusion and restraint to see if different groups experience

² SCHEDULE 1 Article 8, Human Rights Act 1998

³ The Equality Act 2010

⁴ The Mental Health Act 1983 as amended

⁵ SCHEDULE 1 Article 5, Human Rights Act 1998

⁶ The United Nations Convention on the Rights of Disabled People Article 25

⁷ The United Nations Convention on the Rights of Disabled People Article 25

⁸ SCHEDULE 1 Article 3, Human Rights Act 1998

⁹ SCHEDULE 1 Article 8, Human Rights Act 1998

¹⁰ The Mental Health Act 1983 as amended

restraint and seclusion more frequently than others.

Environment and Culture

- Our Trust Values include Respect, Compassion Fairness and Partnership. These values are at the heart of our organisations culture.
- We aim to treat all people who use our services as individuals and this includes recognising the diversity of the people who use our services and making adjustments to ensure equal access to and a positive experience of services. The need for adjustments is identified through assessment and care planning.
- We provide Race Equality Cultural Capability Training and mandatory equality and diversity training.
- All of these areas are supported by our trust strategy to Promote and Improve Equality Diversity and Inclusion for Black Asian and Minority Ethnic Service Users and Staff

Appendix H – Policy Governance Charts

Mental Health Act Code of Practice - Equality and Human Rights Policy - Governance Flow Chart – EQUALITY

Policy Section	Achieved By	Governance	Lead
6.1.3 and 6.1.4	→ Equality Impact Analysis and Human Rights Review process	→ Policy on Policies	→ Policy Governance Lead
6.1.7	→ Quarterly Report to the Mental Health Act Committee	→ Mental Health Act Committee	→ The Head of Equality and Inclusion and the Head of Mental Health Legislation
6.1.8	→ Specific Section in the Trust Annual Equality and Human Rights Report	→ Mental Health Act Committee	→ The Head of Equality and Inclusion and the Head of Mental Health Legislation
6.1.10	→ EMSA	→ Quality Assurance Committee	→ Inpatient Services Clinical Manager
6.1.11 and 6.1.12	→ Monthly summary of any relevant MHA breaches to Head of Equality and Inclusion	→ BME Strategy Steering Group Specific to MHA - Mental Health Act Committee	→ The Head of Equality and Inclusion and the Head of Mental Health Legislation
6.1.13; 6.1.14; 6.1.15	→ Quarterly Report to the Mental Health Act Committee of relevant incidents or issues	→ Mental Health Act Committee	→ The Head of Equality and Inclusion and the Head of Mental Health Legislation

Mental Health Act Code of Practice - Equality and Human Rights Policy - Governance Flow Chart – HUMAN RIGHTS

Policy Section	Achieved By	Governance	Lead
6.2.2.1	Human Rights Compliance Review	Policy on Policies	Policy Governance Lead
6.2.2.3	Quarterly Report to the Mental Health Act Committee. To include relevant breaches of the MHS and MCA.	Mental Health Act Committee	Head of Mental Health Legislation
6.2.2.4 and 6.2.2.5	MHA audit	Mental Health Act Committee	Head of Mental Health Legislation
6.2.2.6	Quarterly Report to the Mental Health Act Committee of relevant incidents or issues	Mental Health Act Committee	Head of Mental Health Legislation
6.2.2.8	Review of restrictive interventions	Restrictive Interventions Group	Inpatient Services Clinical Manager